

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANGEL DAVID MORALES-VALLELLANES,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,
et al.,

Defendants.

CIVIL NO. 97-2459 (JAG)

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT

TO THE HONORABLE COURT:

COMES NOW, the defendant, through its undersigned attorneys and pursuant to Local Rule 7(b), respectfully submits his Opposition to Plaintiff's Motion for Default against the defendant. No Memorandum of Law is included because none is deemed necessary in support of defendant's posture.

At the outset and contrary to plaintiff's contention, defendant did file a responsive pleading to Plaintiff's Amended Complaint. He did so on May 11, 1999. (See Docket Entry no. 51.)

The docket history for this case since May of 1999 is abundant. It includes, among others, this Court's denial of Plaintiff's First Motion for Entry of Default against the appearing defendant. (See Docket Entries nos. 82 and 127, respectively.) It also includes this Court's Final Judgment whereby Plaintiff's Amended Complaint was entirely dismissed. (See Docket Entry no.

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61.) It also includes Plaintiff's Appeal to the First Circuit from the District Court's Final Judgment (Docket Entry no. 163) and, finally, the printed Opinion from the U.S. Court of Appeals whereby the case was remanded to the District Court for the latter to address three (3) limited issues which are set forth therein. (Docket Entry No. 168)

Almost five (5) years after plaintiff filed his Amended Complaint on May 3, 1999 and, almost two (2) years after this Court issued its Final Judgment dismissing plaintiff's Amended Complaint in toto (07-24-2002) and, one year and eight months after plaintiff filed his Notice of Appeal (08-15-2002) coupled with eight months after the Court of Appeals issued its Judgment for this case (08-13-2003), and, after, this District Court held a Case Management Conference on January 9, 2004, the plaintiff now decides to file a Motion for Entry of Default against the defendant.

Plaintiff's Motion for Default is not only frivolous and misplaced but completely untimely and unwarranted. The plaintiff has failed to timely raise the default issue, although he had ample time to do so. Not raising it at the proper time constitutes a waiver of such an argument, if he ever had any legal ground to raise it, which the defendant denies because the case docket clearly shows that the defendant did file a responsive pleading in

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the form of a dispositive motion to dismiss. The Court subsequently dismissed plaintiff's Amended Complaint partly based on defendant's legal arguments which were set forth at his dispositive motion to dismiss.

In addition and given the U.S. Court of Appeals's Remand Order for this District Court to only address the three (3) specific areas mentioned therein, the Remand Order moots many of plaintiff's allegations which are set forth at his Amended Complaint dated May 3, 1999. Many of such allegations are past history and plaintiff's Amended Complaint is only relevant if it pertains to his surviving claims which are very limited in nature and scope.

WHEREFORE, the defendant respectfully requests from this Honorable Court that it deny Plaintiff's Motion for Default as hereinabove set forth.

I HEREBY CERTIFY that on April 7, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Miguel E. Miranda Gutiérrez, Esquire
Cond. El Centro I, Local 15-132
500 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918

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RESPECTFULLY SUBMITTED in San Juan, Puerto Rico, this _____
day of April 2004.

H.S. GARCIA
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